

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Petitions for Designation as a Lifeline)	WC Docket No. 11-42
Broadband Provider)	

**RESPONSE AND OPPOSITION OF STS MEDIA, INC. D/B/A FREEDOMPOP TO THE
PETITION FOR RECONSIDERATION OF NATIONAL TRIBAL
TELECOMMUNICATIONS ASSOCIATION**

STS Media, Inc. d/b/a FreedomPop (FreedomPop or the Company), by and through the undersigned counsel, respectfully submits this response and opposition to the National Tribal Telecommunications Association's (NTTA's)¹ petition for reconsideration of the Wireline Competition Bureau's (WCB's or Bureau's) December 1, 2016 Order designating FreedomPop as a Lifeline Broadband Provider (LBP).² FreedomPop acknowledges NTTA's concerns regarding notice requirements for LBP petitions and the Commission's long-standing policy of recognizing the sovereignty of Tribal governments and to involve Tribal governments in policy

¹ See Petition for Reconsideration of National Tribal Telecommunications Association, WC Docket Nos. 11-42, 09-197 (Jan. 3, 2017) (Petition). Notably, NTTA does not represent any sovereign Tribal nation or other Tribal authority, but rather is a coalition of Tribally-owned communications companies. FreedomPop notes that not a single Tribal nation or organization that represents Tribal nations has objected to either the form or substance of FreedomPop's LBP petition or designation.

² See *Telecommunications Carriers Eligible for Universal Service Support, Petitions for Designation as a Lifeline Broadband Provider*, WC Docket Nos. 09-197, 11-42, Order, DA 16-1325 (WCB rel. Dec. 1, 2016) (LBP Designation Order). The LBP Designation Order was issued pursuant to the rule changes adopted in the Federal Communications Commission's (FCC's or Commission's) Lifeline Modernization Order. See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order).

decisions that affect Tribal consumers. However, the Petition presents no evidence of a material error or omission that would justify reconsideration or reversal of the LBP Designation Order. Neither the Company's petition for designation as an LBP nor the Commission's review and approval of it violated the Commission's rules with regard to LBP eligible telecommunications carrier (ETC) designations. Additionally, the streamlined process for the docketed filing and review of LBP petitions established in the Lifeline Modernization Order is consistent with processes employed by the Commission for streamlined review in other contexts, and provided NTTA and its members adequate notice and opportunity to comment on FreedomPop's petition. Accordingly, the Petition should be denied.

Notwithstanding the foregoing, FreedomPop is both cognizant and respectful of the sovereignty of Tribal governments and it is committed to notifying, and, if required, seeking approval from the relevant Tribal authorities in each state where it received LBP designation prior to providing services to Tribal consumers in those states. Moreover, FreedomPop acknowledges that NTTA's Petition illustrates the potential for confusion about the LBP review and approval process. As discussed below, FreedomPop would support certain actions by the Bureau to clarify these processes and avoid uncertainty going forward.

I. Standard of Review Under Section 1.429

NTTA submits its Petition pursuant to section 1.429 of the Commission's rules, which allows an interested party to seek reconsideration of a final order in a rulemaking proceeding.³ The rule also states, however, that petitions for reconsideration "may be dismissed or denied by the relevant bureau(s) or office(s) [if they] ... [f]ail to identify any material error, omission, or

³ See 47 C.F.R. § 1.429.

reason warranting reconsideration.”⁴ As set forth in this response, the Petition fails to present any evidence of a material error or omission that would warrant reconsideration of the LBP Designation Order, and therefore should be denied.

II. Section 54.202(c) Does Not Apply to Petitions for LBP Designation

NTTA’s Petition relies primarily on the argument that FreedomPop and the Commission failed to comply with the procedural requirements of section 54.202(c) of the Commission’s rules.⁵ Specifically, NTTA asserts that FreedomPop was obligated to provide a copy of its LBP petition to “affected tribal government and tribal regulatory authorities at the time” that FreedomPop submitted its petition to the Commission.⁶ NTTA bases its assertion on language in the Lifeline Modernization Order which states that “[a]ll LBPs ... must meet the requirements for designation as a Lifeline-only ETC established in section 214(e) of the [Communications] Act and section 54.201 and 54.202 of the Commission’s rules.”⁷ However, a closer examination of section 54.202 and the Lifeline Modernization Order shows that subsection (c) does not apply to LBP petitions.

Through the Lifeline Modernization Order, the Commission codified the requirements for requests for LBP designation through a new subsection (d) to section 54.202.⁸ This new subsection states that “[a] common carrier seeking designation as a Lifeline Broadband Provider

⁴ See 47 C.F.R. § 1.429(l).

⁵ See Petition at 4-8.

⁶ See *id.* at 4. NTTA further claims that the Commission was required to “notify tribal governments and tribal regulatory authorities of requests made by carriers to serve tribal lands.” *Id.*

⁷ See *id.*; see also Lifeline Modernization Order ¶ 284.

⁸ See 47 C.F.R. § 54.202(d). The Commission also adopted a new subsection (e) to section 54.202, which addresses requests for expansion of an LBP’s approved service area. See 47 C.F.R. § 54.202(e).

eligible telecommunications carrier must *meet the requirements of paragraph (a) of this section.*”⁹ The adoption of separate requirements for LBP petitioners that expressly imposes only certain requirements of section 54.202(a)¹⁰ on LBP applicants demonstrates that the Commission did not intend for subsection (c) to apply to LBP designation requests. Therefore, FreedomPop was not required to provide copies of its petition to the relevant Tribal governments and Tribal regulatory authorities in the states where it was seeking LBP designation. FreedomPop respectfully notes that its petition for and grant of LBP designation invoked Tribal lands in only two states – Hawaii and Oklahoma – where Tribal lands are not governed by Tribal sovereigns.¹¹

III. The Process for Reviewing and Approving LBP Petitions Is Consistent with the Commission’s Processes for Streamlined Reviews in Other Contexts and Gave NTTA Adequate Notice of and Opportunity to Comment on FreedomPop’s Petition

The Commission’s process for issuing the LBP Designation Order is consistent with traditional Commission practice regarding streamlined reviews. Applications chosen for streamlined review are presumed to be deemed granted unless the Commission informs the applicant otherwise during the streamlined review period.¹²

⁹ See 47 C.F.R. § 54.202(d) (emphasis added).

¹⁰ See Lifeline Modernization Order ¶ 284, n.746 (noting that the requirement to submit a 5-year improvement plan as required under section 54.202(a) would not apply to LBPs).

¹¹ FreedomPop notes further that in these states, it will endeavor to notify and work cooperatively with Tribal interests, including securing appropriate authority prior to distributing Lifeline services on property owned or controlled by Tribal nations.

¹² See Lifeline Modernization Order ¶¶ 278, 281; see also *Worldcom, Inc. et al. v. FCC and U.S.A.*, No. 99-1395 (D.C. Cir. 1974) (noting that in the Interexchange Proceeding, the Commission adopted streamlined procedures whereby business service tariffs filed by AT&T were given streamlined processing whereby they were “presumed lawful” upon filing and would become effective after a fourteen day notice period); *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 98-118, Report and Order, FCC 96-79 (rel. Feb. 29, 1996) (International Section 214 Order) (explaining that international section 214 applications are deemed automatically granted upon acceptance for streamlined processing);

In its Petition, NTTA maintains the Commission's actions were improper and warrant reconsideration of the LBP designation to FreedomPop because "the comment period on the applications had not ended prior to the Bureau's granting of" LBP designation FreedomPop.¹³ NTTA fails, however, to acknowledge the specific parameters of what it means for a petition to be approved for streamlined processing. Commission precedent with streamlined procedures illustrates that applications that meet the specified streamlining criteria are expected to be noncontroversial and as such it is presumed that they will be deemed granted.¹⁴ In this case, the Commission's LBP Designation Order confirms this assessment by explaining "there is no contradictory evidence available to us raising concern" about FreedomPop's LBP petition or any other LBP petition granted.¹⁵

In the Lifeline Modernization Order, the Commission explained that a provider's petition for LBP designation will be subject to "expedited review and will be deemed granted within 60 days of the submission of a completed filing" unless the Commission notifies the petitioner the designation is not "automatically effective."¹⁶ The Commission further noted that petitions that do not meet the streamlining criteria will not receive a presumption of approval after 60 days but rather petitioners can expect action within six months of submission. It is clear from the language in the Lifeline Modernization Order that the Commission intended to adopt a

Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, FCC 01-332 (rel. Dec. 14, 2001) (Cable Landing License Order).

¹³ See Petition at 8.

¹⁴ See e.g., Cable Landing License Order ¶ 13 (explaining that only applications that do not pose a risk will be streamlined); *Worldcom, Inc. et al. v. FCC and U.S.A.*;

¹⁵ See LBP Designation Order ¶ 8.

¹⁶ See Lifeline Modernization Order ¶ 278 (indicating petitions that do not qualify for streamlined processing will not be presumed to have LBP status approval) (emphasis added).

streamlined procedure for LBP petitions consistent with its regulatory precedents¹⁷ on such matters.

As a result, the streamlined LBP petition process does not contemplate nor include a formal notice and comment procedure. The decision to set up a LBP tracker webpage was simply a courtesy done for informational purposes only, and the “comment deadline” indicated was neither an official act of the Commission nor the Bureau. It is well settled that informal postings or releases do not bind the Commission. For example, in *MCI v. FCC*, the court found that a Commission-issued press release was an unofficial, informal summary of agency action and could not be relied on as formal public notice.¹⁸ Comparably, here, the Bureau’s LBP petitions webpage serves as a mere summary of LBP petition activity and cannot be relied on by NTTA or any other interested party as a legal mechanism establishing a formal comment cycle.

Though the Commission webpage does not constitute an official mechanism for comment, NTTA and its members had sufficient notice and opportunity to comment on FreedomPop’s petition. FreedomPop’s petition was electronically submitted and filed in a public docket designated to this proceeding. The requisite filing of the LBP designation petition in a pre-designated public docket afforded NTTA and its members adequate notice and opportunity to comment or oppose if they sought fit. Indeed, NTTA did in fact file comments with the Commission on November 17, 2016 regarding petitions filed for LBP designation at that time. Yet, NTTA raised no substantive issues about the petitions on file at that time – or at any time since about those or any other LBP petitions. Thus, any claim by NTTA that it lacked notice of

¹⁷ See generally International Section 214 Order; Cable Landing License Order.

¹⁸ See generally *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

FreedomPop's petition appears to be one of form over substance and does not warrant reconsideration of FreedomPop's LBP designation.

Pursuant to the Lifeline Modernization Order, the Commission may approve a streamlined LBP petition at any point within 60 days of submission of a completed LBP petition.¹⁹ Therefore, the grant of FreedomPop's LBP designation does not warrant a reconsideration of the Commission's decision.

IV. FreedomPop Will Notify, and If Required, Seek Approval from the Relevant Tribal Authorities Prior to Providing Lifeline Service on Tribal Lands

While FreedomPop respectfully opposes NTTA's Petition, it fully supports Commission policy recognizing the sovereignty of Tribal nations and similarly respects the sovereignty of all relevant Tribal governments and authorities throughout its LBP service area. FreedomPop also acknowledges the Commission's policies designed to address the "the difficulties many Tribal consumers face in gaining access to basic services" and the "important role of universal service support in helping to provide telecommunications services to the residents of Tribal lands."²⁰ As such, FreedomPop commits to notify and seek approval, if required, from the relevant Tribal authorities in each of the states where it was – or may in the future be – granted LBP designation prior to providing service to Tribal residents.

As noted above, FreedomPop's LBP petition requested authority to serve Tribal subscribers only in Hawaii and Oklahoma. Neither of these states have a Tribal sovereign authority that regulates Lifeline services offered to residents of either Hawaiian Home Lands or former reservations in Oklahoma. Nevertheless, FreedomPop commits to notifying both the

¹⁹ See Lifeline Modernization Order ¶ 278 (stating that LBP petitions eligible for streamlined processing "will be deemed granted *within* 60 days of the submission...").

²⁰ *Id.* ¶ 206.

Department of Hawaiian Home Lands in Hawaii and the Public Utilities Division of the Oklahoma Corporation Commission to ensure that its provision of Lifeline broadband service offerings to eligible residents of Tribal lands in these states is well known and serves the interests intended to be served through the enhanced Lifeline program for eligible Tribal residents in these two states.

V. NTTA’s Petition Illustrates that Clarification from the Bureau Regarding the LBP Designation Process Is Warranted

Despite the deficiencies in the Petition that make reconsideration or reversal of the LBP Designation Order unwarranted, NTTA’s request does illustrate the potential for confusion regarding the appropriate process for LBP petitions. As such, FreedomPop would support certain actions by the Bureau to provide clarity about LBP petition requirements, and the process for reviewing and approving such petitions on a prospective basis, including the following:

- Issuance of guidance to clarify that section 54.202(c) does not apply in the LBP context in light of the adoption of section 54.202(d);
- Removal of the “Comment Deadline” column from the LBP petitions “tracker” page on the Commission’s website and adoption of a formal mechanism to clarify expectations regarding streamlined LBP applications modeled after the approach for streamlined processing that is used for international section 214 applications wherein the Commission issues a Public Notice noting the presumption of approval at any point within 60 days after submission of a petition that qualifies for streamlined processing without establishing a formal comment period; and
- Issuance of a public notice explaining that a streamlined LBP petition may be acted upon at any point within 60 days after submission, which would make clear that interested parties should submit comments on the petition as soon as possible.

FreedomPop submits that these clarifications would help manage public expectations of the LBP review and approval process, and would prevent uncertainty going forward.²¹

VI. Conclusion

FreedomPop respects the sovereignty of Tribal nations and understands the importance of ensuring that these entities have notice from service providers prior to commencement of service on sovereign Tribal lands. However, for the reasons set forth in this response, and in light of FreedomPop's commitments to cooperate with the Department of Hawaiian Home Lands in Hawaii and the Public Utilities Division of the Oklahoma Corporation Commission prior to providing Lifeline broadband services in Tribal areas, the Petition should be denied.

Respectfully submitted,



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²¹ The Public Notice requirement contemplated herein should apply on a prospective basis only as new petitions for LBP designation are filed.